

1 HONORABLE RICHARD A. JONES
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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE
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15 University Insurance, LLC,
16 Plaintiff,
17 v.
18 Allstate Insurance Company,
19 Defendant.
20

21 Case No. 2:20-cv-01743-RAJ
22 ORDER GRANTING MOTION TO
23 DISMISS
24

25 **I. INTRODUCTION**

26 This matter comes before the Court on Defendant's Motion to Dismiss (Dkt. # 5).
27 Having considered the submissions of the parties, the relevant portions of the record, and
28 the applicable law, the Court finds that oral argument is unnecessary. For the reasons
below, the motion is **GRANTED**.

29 **II. BACKGROUND**

30 Plaintiff University Insurance LLC ("University") is a limited liability company;
31 its members are shareholders and officers of automobile dealerships in Seattle,
32 Washington. Dkt. # 1-2 ¶¶ 1, 3. Among other products and services, the dealerships sell
33 new Volkswagen and Audi vehicles. *Id.* ¶ 3.

34 In 2015, Defendant Allstate Insurance Company ("Allstate") approached
35 University's members, asking if they would promote or sell Allstate's insurance policies
36
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1 to the dealerships' customers. *Id.* ¶ 4. The members agreed and formed University
 2 Insurance LLC "to operate as an insurance agency" within the dealerships. *Id.* ¶ 6. To
 3 that end, University and Allstate entered the Allstate R3001C Exclusive Agency
 4 Agreement ("Agency Agreement"). *Id.* Under the Agency Agreement, University, as an
 5 independent contractor, was responsible for referring customers to Allstate and "assisting
 6 Allstate in servicing Allstate insureds' claims." *Id.* ¶ 7.

7 Years later, on April 21, 2020, Allstate terminated the Agency Agreement
 8 "without prior notice or opportunity to cure." *Id.* ¶ 12. Under the agreement, Allstate
 9 needed "cause" to terminate the contract in that manner. *See id.* ¶¶ 8, 12. Allstate stated
 10 that it terminated the Agency Agreement because University violated a provision within
 11 it. *Id.* ¶ 23. University alleges that the provision it violated is void under Washington
 12 law. *Id.* ¶¶ 14-15. Because the provision is void, University alleges that Allstate lacked
 13 cause when it terminated the Agency Agreement and thus breached the agreement by
 14 terminating the contract as it did. *Id.* ¶ 16.

15 On October 19, 2020, University sued Allstate in state court. Dkt. # 1-2. Allstate
 16 later removed to this Court and moved to dismiss the complaint. Dkt. ## 1, 5. Allstate's
 17 motion to dismiss is now ripe and pending before the Court.

18 III. LEGAL STANDARD

19 Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a court may dismiss
 20 a complaint for failure to state a claim. The court must assume the truth of the
 21 complaint's factual allegations and credit all reasonable inferences arising from those
 22 allegations. *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007). The court "need not
 23 accept as true conclusory allegations that are contradicted by documents referred to in the
 24 complaint." *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir.
 25 2008). Instead, the plaintiff must point to factual allegations that "state a claim to relief
 26 that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 568 (2007). If
 27 the plaintiff succeeds, the complaint avoids dismissal if there is "any set of facts

1 consistent with the allegations in the complaint” that would entitle the plaintiff to relief.
 2 *Id.* at 563; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

3 On a motion to dismiss, a court typically considers only the contents of the
 4 complaint. However, a court is permitted to take judicial notice of facts that are
 5 incorporated by reference in the complaint. *United States v. Ritchie*, 342 F.3d 903, 908
 6 (9th Cir. 2003) (“A court may . . . consider certain materials documents attached to the
 7 complaint, documents incorporated by reference in the complaint.”); *Mir v. Little Co. of
 8 Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988) (“[I]t is proper for the district court to
 9 ‘take judicial notice of matters of public record outside the pleadings’ and consider them
 10 for purposes of the motion to dismiss.”) (quoting *MGIC Indem. Corp. v. Weisman*, 803
 11 F.2d 500, 504 (9th Cir. 1986)).

12 IV. DISCUSSION

13 University is suing Allstate for breach of the Agency Agreement. Dkt. # 1-2 ¶ 16.
 14 Allstate moves to dismiss that claim. Dkt. # 5. Before turning to the parties’ arguments,
 15 the Court first addresses the parties’ use of footnotes and the incorporation-by-reference
 16 doctrine.

17 A. Footnotes

18 The parties should rethink their use of footnotes. The Court strongly disfavors
 19 footnoted legal citations, which serve as an end-run around page limits and formatting
 20 requirements dictated by the Local Rules. *See Local Rules W.D. Wash. LCR 7(e)*.
 21 Moreover, several courts have observed that “citations are highly relevant in a legal
 22 brief” and including them in footnotes “makes brief-reading difficult.” *Wichansky v.*
 23 *Zowine*, No. CV-13-01208-PHX-DGC, 2014 WL 289924, at *1 n.1 (D. Ariz. Jan. 24,
 24 2014). The Court strongly discourages the parties from footnoting their legal citations in
 25 any future submissions. *See Kano v. Nat'l Consumer Co-op Bank*, 22 F.3d 899-900 (9th
 26 Cir. 1994).

1 **B. Incorporation by Reference**

2 In ruling on a Rule 12(b)(6) motion, a court may not consider any material beyond
 3 the pleadings. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). But it may
 4 consider certain materials, such as documents incorporated by reference into a complaint,
 5 without converting a motion to dismiss into a motion for summary judgment. *Ritchie*,
 6 342 F.3d at 907.

7 Though it asserts a breach of contract claim, University does not attach the
 8 Agency Agreement to its complaint. *See* Dkt. # 1-2. Allstate, however, attaches the
 9 agreement to its motion to dismiss and asks that the Court consider it when ruling on the
 10 motion. Dkt. # 5 at 2 n.1; Dkt. # 7. University does not oppose that request and indeed
 11 cites the Agency Agreement itself in its response to Allstate's motion to dismiss. *See*
 12 Dkt. # 12 at 4-5. Because University's complaint "refers extensively" to the Agency
 13 Agreement, and because the agreement "forms the basis of" University's claim, the Court
 14 considers the Agency Agreement because it is incorporated by reference into the
 15 complaint. *Ritchie*, 342 F.3d at 908. For purposes of this order, the Court need not
 16 consider any other extrinsic evidence.

17 **C. Breach of Contract**

18 To plead a breach of contract claim under Washington law, a plaintiff must allege
 19 "that a valid agreement existed between the parties, the agreement was breached, and the
 20 plaintiff was damaged." *Univ. of Washington v. Gov't Emps. Ins. Co.*, 404 P.3d 559, 566
 21 (Wash. Ct. App. 2017).

22 There is no dispute that the Agency Agreement was a valid agreement between the
 23 parties. Dkt. # 7 at 4-20. At issue here is whether Allstate breached that agreement.

24 According to University, the Agency Agreement set forth the ways that the parties
 25 could terminate the contract. Dkt. # 1-2 ¶ 8. One way was if Allstate had "cause," for
 26 example, if University breached the agreement. *Id.*; Dkt. # 7 at 13. Allstate believed that
 27 University did just that. Dkt. # 1-2 ¶¶ 12-13. It believed that University breached a

1 contractual provision preventing University from “refer[ring] a prospect to another
 2 company, agent, or broker,” without Allstate’s prior approval. *Id.*; Dkt. # 7 at 5. Because
 3 Allstate believed that University breached this provision, it unilaterally terminated the
 4 Agency Agreement for cause. Dkt. # 1-2 ¶¶ 12-13.

5 For its part, University concedes that it violated the referral provision. *Id.* ¶ 14.
 6 But it argues that the provision was void under a Washington statute, RCW 49.62.030.
 7 *Id.* ¶ 15. Because the provision was void, University alleges that Allstate had no cause to
 8 terminate the Agency Agreement in the first place. *Id.* ¶ 16.

9 Thus, the question before the Court is whether the referral provision that
 10 University violated is indeed void under Washington law. If so, then Allstate would have
 11 lacked cause when it terminated the agreement, and University states a plausible breach
 12 of contract claim. If not, then Allstate would have had cause, and University’s contract
 13 claim fails.

14 i. **Noncompetition Covenants and the Referral Provision**

15 Under Washington law, a “noncompetition covenant” is “void and unenforceable”
 16 against an independent contractor.” RCW 49.62.030. The statute defines
 17 “noncompetition covenant” as “every written or oral covenant, agreement, or contract by
 18 which an employee or independent contractor is prohibited or restrained from engaging in
 19 a lawful profession, trade, or business of any kind.” RCW 49.62.010(4). When passing
 20 the statute, the state legislature explained that “workforce mobility is important to
 21 economic growth and development” and that “agreements limiting competition or hiring
 22 may be contracts of adhesion that may be unreasonable.” RCW 49.62.005.

23 The Agency Agreement here contains a provision, Section I.E, limiting
 24 University’s ability to refer prospective customers to another insurer. Dkt. # 7 at 5. In its
 25 entirety, Section I.E provides:

26 Agency will not, either directly or indirectly, solicit, sell, or service
 27 insurance of any kind for any other company, agent, or broker, or refer a
 28 prospect to another company, agent, or broker, without the prior written

1 *approval of the Company.* Agency may, however, write applications for
 2 insurance under an assigned risk, cooperative industry, or government
 3 established residual market plan or facility in accordance with the
 4 Company's rules and procedures.
 5

6 *Id.* (emphasis added).

7 The parties use different terms to characterize Section I.E. University calls it the
 8 “noncompetition covenant,” while Allstate calls it the “non-solicitation provision.” Dkt.
 9 # 5 at 2; Dkt. # 12 at 5. Both “noncompetition covenants” and “non-solicitation
 10 agreements” are defined by statute. Careful to avoid terms of art, the Court refers to
 11 Section I.E as the “Referral Provision.”
 12

13 The Court is presented with a single question: is the Referral Provision a
 14 “noncompetition covenant” under RCW 49.62.010(4) and thereby void under RCW
 15 49.62.030?

16 ii. Statutory Interpretation

17 Based on the Court’s research, no court has yet interpreted RCW 49.62.010’s
 18 definition of “noncompetition covenant.”

19 A court interpreting a state statute as a matter of first impression must “determine
 20 what meaning the state’s highest court would give to the law.” *Brunozzi v. Cable*
 21 *Commc’ns, Inc.*, 851 F.3d 990, 998 (9th Cir. 2017) (quoting *Bass v. Cty. of Butte*, 458
 22 F.3d 978, 981 (9th Cir. 2006)). To do so, the court “follow[s] the state’s rules of
 23 statutory interpretation.” *Id.*

24 When interpreting statutes, the court’s “fundamental objective” is to “ascertain
 25 and carry out the Legislature’s intent, and if the statute’s meaning is plain on its face,
 26 then the court must give effect to that plain meaning as an expression of legislative
 27 intent.” *Thurston Cty. ex rel. Snaza v. City of Olympia*, 440 P.3d 988, 991 (Wash. 2019)
 28 (quoting *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 43 P.3d 4, 9-10 (Wash. 2002)).
 The court derives legislative intent “solely from the plain language of the statute,
 considering the text of the provision, the context of the statute, related provisions,

1 amendments to the provision, and the statutory scheme as a whole.” *First Student, Inc. v.*
 2 *Dep’t of Revenue*, 451 P.3d 1094, 1096 (Wash. 2019). If the plain meaning of a statute is
 3 “unambiguous,” the court ends its inquiry. *Matter of Dependency of E.M.*, 484 P.3d 461,
 4 465 (Wash. 2021). Only when a statute is “ambiguous”—that is, the statute’s language
 5 “remains susceptible to more than one reasonable meaning”—will the court resort to
 6 “aids of statutory construction and legislative history.” *Id.* (quoting *Campbell & Gwinn*,
 7 43 P.3d at 10).

8 To resolve this matter, both parties claim that the Court need only look to RCW
 9 49.62.010’s “plain meaning.” Dkt. # 5 at 6; Dkt. # 12 at 7. The Court agrees. The
 10 statute is unambiguous, and the Court need not consult legislative history or statutory
 11 aids. The Court derives legislative intent from the statute’s plain meaning and ends its
 12 inquiry there.

13 Allstate argues that the Referral Provision is not a noncompetition covenant. It
 14 asks the Court to look at the noncompetition law’s purpose. Dkt. # 5 at 6-9. According
 15 to Allstate, the purpose of the law is to curb both restraints on “workforce mobility” and
 16 limits on “competition” and “hiring.” *Id.* at 6. The Referral Provision here, it says, does
 17 not concern either. *Id.* at 7. Rather, the Referral Provision simply limits University’s
 18 ability to refer prospective customers to a competing insurer while it is working with
 19 Allstate. Dkt. # 13 at 2-6. Because the provision does not prohibit or restrain
 20 University’s workforce mobility, Allstate argues that it does not prohibit or restrain it
 21 from “engaging” in its “profession, trade, or business,” and thus the provision is outside
 22 the statute’s purview. *Id.*

23 University disagrees. Given that the statute voids “every” covenant restraining an
 24 independent contractor from engaging in a business, it says that the statute necessarily
 25 voids “all types and kinds of restrictive covenants” on an independent contractor. Dkt.
 26 # 12 at 8. University suggests that, because the Referral Provision is a restraint on its
 27 business, the section must therefore be a noncompetition covenant and void. *Id.*

1 Applying Washington’s rules of statutory interpretation, the Court finds Allstate’s
 2 arguments more convincing: The Referral Provision is not a “noncompetition covenant”
 3 as defined by RCW 49.62.010.

4 To start, the Court narrows what portions of RCW 49.62.010 it need interpret.
 5 Here, it is undisputed that the Referral Provision is a “written” “covenant, agreement, or
 6 contract” and that University is an “independent contractor.” RCW 49.62.010(4); *see*
 7 *also* Dkt. # 7 at 5. Also undisputed is that University conducts an “insurance agency
 8 business” and hence is engaged in a “profession, trade, or business” of some kind. RCW
 9 49.62.010(4); *see also* Dkt. # 1-2 ¶¶ 10-11. But the parties disagree about what it means
 10 for an independent contractor to be “prohibited or restrained” from “engaging in” their
 11 profession, trade, or business.

12 The statute does not define “prohibit[ion]” or “restrain[t],” so the Court consults
 13 the dictionary. *State v. Sullivan*, 19 P.3d 1012, 1019 (Wash. 2001) (“In the absence of a
 14 statutory definition, we will give the term its plain and ordinary meaning ascertained
 15 from a standard dictionary.” (footnotes omitted)). “Prohibition” is “the act of prohibiting
 16 by authority” or an “order to restrain or stop.” Prohibition, Merriam-Webster,
 17 <https://www.merriam-webster.com/dictionary/prohibition> (last visited Sept. 29, 2021).
 18 To prohibit is “to prevent from doing something” or “to forbid.” Prohibit, Merriam-
 19 Webster, <https://www.merriam-webster.com/dictionary/prohibiting> (last visited Sept. 29,
 20 2021).

21 The Referral Provision does not entirely prohibit or forbid University from
 22 operating its insurance agency business. Neither party argues that it does. It merely
 23 limits or restrains some of University’s business practices while working with Allstate.
 24 Thus, if University receives any relief under the noncompetition statute at all, it must be
 25 because the Referral Provision constitutes a “restraint.”

26 “Restraint” is the “act of restraining.” Restraint, Merriam-Webster,
 27 <https://www.merriam-webster.com/dictionary/restraint> (last visited Sept. 29, 2021). To
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1 restraint is “to limit, restrict, or keep under control” or “to moderate or limit the force,
2 effect, development, or full exercise of.” Restrain, Merriam-Webster,
3 <https://www.merriam-webster.com/dictionary/restraining> (last visited Sept. 29, 2021).

4 Turning to the parties’ arguments, the Court concludes that a “noncompetition
5 covenant” does not include—literally—every “restraint” on an independent contractor’s
6 business. University asks the Court to adopt a literal reading of the word “restraint.” It
7 suggests that a restraint constitutes any limitation on its insurance agency business: it thus
8 applies to “all types and kinds of restrictive covenants.” Dkt. # 12 at 8. The Court will
9 not adopt that reading for it ignores several principles of statutory interpretation.

10 First, courts “avoid literal reading of a statute which would result in unlikely,
11 absurd, or strained consequences.” *Fraternal Ord. of Eagles, Tenino Aerie No. 564 v.*
12 *Grand Aerie of Fraternal Ord. of Eagles*, 59 P.3d 655, 663 (Wash. 2002). Taking the
13 word “restraint” and reducing it to its most generic definition, “limit,” as University
14 would have it, leads to absurd consequences. That interpretation would call into question
15 any contractual provision between an employer and an independent contractor.

16 Almost any contractual provision could be characterized as a literal “limit” on
17 one’s business. A dress code? That may impose a cost on an independent contractor,
18 thereby decreasing its profit and placing a “limit” on its business. A requirement to use
19 certain materials or perform certain tasks? That may also impose additional costs. It may
20 also require an independent contractor to perform a task in a way the contractor would
21 not have but for the contractual duty, hence imposing a limit. Or, as Allstate postulates,
22 an assignment provision for inventions made on a company’s dime? Dkt. # 13 at 5. That
23 may limit an independent contractor’s business because it would prevent the contractor
24 from selling for himself the invention that he made for the company’s benefit. All
25 examples, though literally “limits” on one’s business, are far afield from any statutory
26 purpose, and all demonstrate the absurd consequences that may result from a literal
27 reading.

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1 Nothing in the statute suggests that it is aimed at all covenants, regardless of type.
2 If the legislature truly wished to drag all covenants into this statute’s sweep, the Court
3 believes it would have said so. *See Wright v. Jeckle*, 144 P.3d 301, 305 (Wash. 2006)
4 (“If the legislature contemplated such a[n absurd] result, we believe it would have spoken
5 up by now.”).

6 Second, courts do not “read words in isolation”; they “read words within the
7 context of the whole statute and larger statutory scheme.” *City of Auburn v. Gauntt*, 274
8 P.3d 1033, 1037 (Wash. 2012). What is more, “[s]tatutes must be interpreted and
9 construed so that all the language used is given effect, with no portion rendered
10 meaningless or superfluous.” *Associated Press v. Washington State Legislature*, 454
11 P.3d 93, 96 (Wash. 2019) (quoting *Whatcom County v. City of Bellingham*, 909 P.2d
12 1303 (Wash. 1996)).

13 Besides being too literal, University’s interpretation reads the word “restraint” in
14 isolation. Again, University believes that “restraint” includes “all types and kinds of
15 restrictive covenants.” Dkt. # 12 at 8. That reading is not only illogical, but it also leaves
16 certain words in the statute meaningless.

17 RCW 49.62.010(4) defines “noncompetition covenant” as “every written or oral
18 covenant, agreement, or contract by which an employee or independent contractor is
19 prohibited or restrained from engaging in a lawful profession, trade, or business of any
20 kind.” The statute, by its own terms, applies to a *specific type* of covenant:
21 *noncompetition* covenants. Yet University says it applies to all covenants, regardless of
22 type. How a *specific type* of covenant could include *all types* of covenants is perplexing.
23 Logic aside, if noncompetition covenants indeed included “all types and kinds” of
24 covenants, then the word “noncompetition” in the statute becomes entirely meaningless
25 or surplusage, violating a principle of statutory interpretation.

26 In sum, University’s literal, isolated reading of RCW 49.62.010 is unpersuasive
27 and unreasonable. A better reading considers the statutory scheme as a whole and effects
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1 the state legislature’s intent.

2 The Court holds that RCW 49.62.010 prohibits only certain types of “restraints,”
3 namely those that restrain independent contractors’ “workplace mobility” or those that
4 limit their “competition or hiring”: that is what it means to impermissibly limit their
5 ability to “engage in” their profession, trade, or business.

6 To determine the plain meaning of RCW 49.62.010, the Court must not look to
7 that section alone. It must carry out legislative intent by looking to “related statutes [that]
8 disclose legislative intent about the provision in question.” *State, Dep’t of Ecology v.
9 Campbell & Gwinn, L.L.C.*, 43 P.3d 4, 10 (Wash. 2002). RCW 49.62.005, the chapter’s
10 “Findings,” reveal the legislature’s intent. *See State v. Shawn P.*, 859 P.2d 1220, 1224
11 (Wash. 1993) (“The purpose of this legislation is stated in the following legislative
12 finding . . .”); *Gauntt*, 274 P.3d at 1037 (explaining that chapter 3.50 RCW’s “explicit
13 purpose” is expressed in RCW 3.50.005, the chapter’s “Legislative finding”).

14 The purpose of the noncompetition chapter is to promote “workforce mobility”
15 and to curb “agreements limiting competition or hiring.” RCW 49.62.005. Thus, given
16 the legislature’s intent, the “restraints” targeted by the noncompetition statute are
17 generally those that stifle “workforce mobility” or “competition” and “hiring.”

18 This interpretation succeeds everywhere that University’s interpretation fails. It
19 does not give “restraint” its literal meaning, avoiding absurd consequences. Dress codes,
20 and other abstract “limits” on business, would likely be out of the statute’s crosshairs.
21 They conceivably have no bearing on one’s workforce mobility or ability to be hired
22 elsewhere. Further, this interpretation gives meaning to all words in the statute—a
23 “noncompetition covenant” would no longer simply mean “all covenants,” preserving the
24 meaning of the word “noncompetition.” Finally, and perhaps most important, it does not
25 ignore the legislature’s express intent.

26 Applying that interpretation to the Referral Provision here, the Court holds that the
27 provision is not a “noncompetition covenant” under RCW 49.62.010. The Referral
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1 Provision does not “restrain” University’s “workplace mobility” or “hiring.” The Court
2 struggles to see how University, a limited liability corporation, could be hired or fired or
3 how it could move from one workplace to another in the first place. Even if it could, the
4 Referral Provision by its own terms does not limit University’s workforce mobility. It
5 merely limits whose insurance policies University may promote while it is working with
6 Allstate. It does not limit University’s workforce mobility by, for example, restraining
7 University’s ability to work with a future employer. Thus, University is free to “engage
8 in” its insurance agency business. RCW 49.62.010. Because it does not restrain
9 University’s workforce mobility, the Referral Provision is not a “noncompetition
10 covenant” under RCW 49.62.010 and is not void under RCW 49.62.030.

11 As explained above, the question before the Court is not whether University
12 violated the Referral Provision. That much is undisputed. Dkt. # 1-2 ¶ 14. Its own
13 complaint alleges that University violated the provision by “refer[ing] some of their
14 customers to insurers other than Allstate.” *Id.* Instead, the question is whether the
15 Referral Provision is itself void under Washington’s noncompetition laws. The Court
16 holds that it is not. Thus, given University’s violation, it is undisputed that Allstate had
17 cause to terminate the Agency Agreement, and the Court grants Allstate’s motion to
18 dismiss. *Id.* ¶ 8; Dkt. # 7 at 13.

19 iii. **Miscellaneous Issues**

20 For clarity, the Court addresses two additional issues raised in the motion. First,
21 University emphasizes that it earned less than \$250,000 a year from Allstate. Dkt. # 12 at
22 2. This is irrelevant. RCW 49.62.030 voids noncompetition covenants with an
23 independent contractor “unless the independent contractor’s earnings from the party
24 seeking enforcement exceed two hundred fifty thousand dollars per year.”
25 University alleges that it earned less than \$250,000 a year, presumably to show that this
26 statutory exception does not apply. *See* Dkt. # 1-2 ¶ 15. But given the Court’s
27 conclusion that the Referral Provision is not a “noncompetition covenant,” the statute, at
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1 bottom, is inapplicable, and University's earnings are irrelevant.

2 Second, throughout its motion, Allstate refers to the Referral Provision as a "non-
 3 solicitation provision." *See* Dkt. # 5 at 7. But "nonsolicitation agreement" has a statutory
 4 definition that does not apply here. The definition of "noncompetition covenant"
 5 expressly excludes "nonsolicitation agreements." RCW 49.62.010(4). Nonsolicitation
 6 agreements are those "between an *employer and employee* that prohibits solicitation by
 7 an employee, *upon termination of employment*: (a) Of any employee of the employer to
 8 leave the employer; or (b) of any customer of the employer to cease or reduce the extent
 9 to which it is doing business with the employer." RCW 49.62.010(5) (emphasis added).
 10 That definition is plainly inapplicable here, not least because University was not
 11 Allstate's "employee" and because the Referral Provision did not apply only "upon
 12 termination of employment." University was an independent contractor, and the Referral
 13 Provision applied during University's employment with Allstate. Dkt. # 7 at 5. Thus,
 14 despite Allstate's label, the Referral Provision is not a "nonsolicitation agreement" and is
 15 not expressly exempt from Washington's noncompetition law. *See* Dkt. # 12 at 9-10.

16 D. Leave to Amend

17 A court may deny a plaintiff leave to amend if "allegation of other facts consistent
 18 with the challenged pleading could not possibly cure the deficiency." *Telesaurus VPC,*
 19 *LLC v. Power*, 623 F.3d 998, 1003 (9th Cir. 2010) (quoting *Schreiber Distrib. Co. v.*
 20 *Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986)). "Leave to amend is
 21 warranted if the deficiencies can be cured with additional allegations that are 'consistent
 22 with the challenged pleading' and that do not contradict the allegations in the original
 23 complaint." *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011)
 24 (quoting *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296-97 (9th Cir. 1990)).

25 Amendment may be futile here. University alleges that the Agency Agreement
 26 permitted Allstate to unilaterally terminate the agreement if it had "cause." Dkt. # 1-2
 27 ¶ 8. Cause undoubtedly included breach of the Agency Agreement. Dkt. # 7 at 13.

1 University concedes that it violated the Referral Provision. Dkt. # 1-2 ¶ 4. Its entire
2 breach theory rested on its claim that the Referral Provision was void under Washington's
3 noncompetition statute. *Id.* ¶¶ 15-16. The Court has now rejected that theory as a matter
4 of law. Based on the allegations in the complaint, it seems clear that Allstate had cause
5 to terminate the Agency Agreement. Whether this deficiency can be cured by
6 amendment is doubtful. But “[t]he standard for granting leave to amend is generous.”
7 *Corinthian Colleges*, 655 F.3d at 995 (quoting *Balistreri v. Pacifica Police Dept.*, 901
8 F.2d 696, 701 (9th Cir. 1990)). And the Court cannot say for sure that the additional,
9 consistent allegations could not cure the complaint. Given that uncertainty, the Court
10 cannot conclude at this stage that amendment would be futile and grants University leave
11 to amend.

V. CONCLUSION

13 For the reasons stated above, the Court **GRANTS** Allstate's Motion to Dismiss
14 (Dkt. # 5). The Court grants University leave to file an amended complaint **within 21**
15 **days** of the entry of this Order.

DATED this 29th day of September, 2021.

Richard D. Jones

The Honorable Richard A. Jones
United States District Judge